

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

**HENRY E. ARMSTRONG
LA. DOC. #313045**

CIVIL ACTION NO. 10-1601

VERSUS

JUDGE ROBERT G. JAMES

WARDEN, OUACHITA PARISH

MAG. JUDGE KAREN L. HAYES

RULING

On November 30, 2010, Magistrate Judge Karen L. Hayes issued a Report and Recommendation [Doc. No. 5], in which she recommended that this Court dismiss Petitioner Henry E. Armstrong's ("Armstrong") Petition for Writ of *Habeas Corpus*, filed pursuant to 28 U.S.C. § 2254, based on his admitted failure to exhaust state court remedies.

On that same day, the Clerk of Court forwarded a copy of the Report and Recommendation by U.S. Mail to Armstrong at his last known place of confinement. However, on December 3, 2010, the Report and Recommendation was returned to the Clerk of Court, marked "RTS" and "not here." [Doc. No. 6].

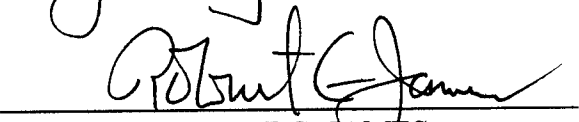
Local Rule 41.3W, in pertinent part, provides:

The failure of an attorney or *pro se* litigant to keep the Court apprised of an address change may be considered cause for dismissal for failure to prosecute when a notice is returned to the Court for the reason of an incorrect address and no correction is made to the address for a period of 30 days.

In the present case, the Magistrate Judge's Report and Recommendation was returned to the Clerk of Court as undeliverable on December 3, 2010. As of this date, more than thirty days later, Armstrong has failed to advise the Court of his new address.

Accordingly, for the foregoing reasons, together with the reasons stated in the Magistrate Judge's Report and Recommendation [Doc. No. 5], and after an independent review of the record, and determining that the findings are correct under the applicable law, the Court finds that Armstrong's civil rights action should be DISMISSED WITHOUT PREJUDICE for failure to exhaust his state court remedies and failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and Local Rule 41.3W.

MONROE, LOUISIANA, this 14 day of January, 2011.



ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE